IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.2772 of 2006

Date of Decision: 19.10.2007

Beg Raj & Ors. ...Petitioners

Vs.

Satbir & Anr. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.M.L.Sarin, Senior Advocate,
with Ms.Alka Sarin, Advocate,
for the petitioners.

Mr.Ashok Aggarwal, Senior Advocate,
with Mr.Mukal Aggarwal, Advocate,
for the respondents.

Vinod K.Sharma, J.

This revision petition has been filed against the order passed by the learned courts below dismissing the application moved by the petitioners under Order 39 Rules 1 and 2 of the Code of Civil Procedure in a suit for permanent injunction.

The plaintiffs had brought the present suit for permanent

injunction on the plea that they are owners in possession of the land measuring 108 kanals 17 marlas situated in the revenue estate of village Dipalpur Tehsil and District Sonepat. It was claimed that Kali Ram, father of Beg Raj, had suffered a decree in favour of the plaintiffs on 6.12.1983. The said decree was still in full force and binding. It was claimed that the defendant-respondents filed a suit for declaration claiming inheritance and also claimed that the decree dated 6.12.1983 was not binding on the rights of Daryao as well as his sons. The suit filed by the defendant-respondents was decreed by the learned Civil Judge (Senior Division), Sonepat and the said decree was affirmed by the learned lower appellate court against which the plaintiff-petitioners filed a regular second appeal which is pending before the High Court. It was claimed that unless and until the matter was decided by the High Court they have no right to interfere in the possession of the plaintiffs.

The suit was contested and a preliminary objection was taken that the suit filed by the plaintiffs was not maintainable. The ownership and possession of the petitioner-plaintiffs was denied and it was claimed that the defendant-respondents were co-owners and in joint possession to the extent of half share each as per the judgment and decree. It was also the case of the respondent-defendants that the petitioner plaintiffs sought stay from the Hon'ble High Court in the regular second appeal but no such stay was granted and the defendant-respondents were merely restrained from alienating the suit property.

Learned courts below keeping in view the fact that the Hon'ble

High Court has not granted stay in favour of the petitioner-plaintiffs and further keeping in view the fact that the status of the parties was that of co-owners declined to issue injunction.

Mr. M.L.Sarin, learned senior counsel appearing on behalf of the petitioners sought injunction by placing reliance on the copy of khasra girdawari attached as Annexure A.1 with the revision petition in which the possession of the petitioners over the land in dispute was shown. Learned senior counsel further contended that as per the case of the defendant-respondents they came in possession of the property in pursuance to the decree passed in their favour and in the absence of any document showing delivery of possession to the defendant-respondents the courts below were not justified in rejecting the application moved by the petitioners under Order 39 Rules 1 and 2 of the Code.

The case of the learned senior counsel for the petitioners further was that the learned trial court in the suit filed by the defendant-respondents had held that the plaintiffs were in possession and the learned lower appellate court without recording any reason has reversed the said finding. It was also contended that as the regular second appeal was pending the finding of the learned lower appellate court had not attained finality and therefore, the plaintiff-petitioners were entitled to injunction on the basis of proved possession.

However, learned senior counsel for the petitioners failed to show as to whether any document was placed on record showing proved possession of the plaintiffs over the land in dispute.

On the other hand, Mr. Ashok Aggarwal, learned senior counsel appearing on behalf of the respondents contended that the petitioners are not entitled to the relief of injunction as they have intentionally placed on record Annexure P.1 which does not depict the correct picture. The contention of the learned senior counsel for the respondents was that in fact, after passing of decree by the learned lower appellate court in their favour they have been shown in possession of the property in the revenue record which is in the knowledge of the petitioners as they have moved an application for correction of khasra girdawari. The contention, therefore, was that a deliberate and intentional attempt was made to mislead this court and therefore, the petitioners were not entitled to any relief from this court.

Learned senior counsel further argued that in the previous suit inter se between the parties the learned lower appellate court was pleased to hold the respondents-defendants to be enjoying possession and in spite of application having been moved in the regular second appeal this court had not granted stay in favour of the plaintiff-petitioners and therefore, they were not entitled to seek the relief from the civil court after having failed in this court.

On consideration of the matter, I find that there is force in the contentions raised by the learned counsel for the respondents. The judgment and decree passed by the learned lower appellate court which was not stayed by this court would be deemed to be in full force and therefore, the learned courts below were justified in holding that the petitioners did

not have any prima facie case in their favour. Learned courts below were further justified in coming to the conclusion that the petitioners being co-owners were not entitled to maintain a suit for injunction as the possession of one co-owner is deemed to be on behalf of all.

Consequently, I find no merit in the present revision petition which is accordingly dismissed.

(Vinod K.Sharma)
Judge

19.10.2007
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